KAZAKHSTAN

In 1998, the U.S. trade deficit with Kazakhstan was $66 million, a decrease in the trade balance of $207 million from the U.S. trade surplus of $142 million in 1997. U.S. merchandise exports to Kazakhstan were approximately $103 million, a decrease of $155 million (60.1 percent) from the level of U.S. exports to Kazakhstan in 1997. Kazakhstan was the United States' 109th largest export market in 1998. U.S. imports from Kazakhstan were about $169 million in 1998, an increase of
$52 million (45.0 percent) from the level of imports in1997. The stock of U.S. foreign direct investment (FDI) in Kazakhstan in 1997 was $1.5 billion, an increase of over 5.1 percent from the level of U.S. FDI in 1996.

Overview

Kazakhstan is in the midst of its transition to a market economy. Key reforms underway include completing Kazakhstan's privatization program, creating a viable securities market, pension reform, modifying its trade regime so that Kazakhstan can join the World Trade Organization (WTO), consolidating the banking sector and improving Kazakhstan's investment climate.

Over 100 American firms have established offices in Almaty, Kazakhstan's former capital and largest city. Major U.S. investors include Chevron, Mobil, Philip Morris, Oryx, and AES.
The move of the capital to Astana, continued personnel changes in government, and a very cumbersome bureaucracy have increased obstacles to doing business in Kazakhstan in the past year.

The US-Kazakhstan bilateral trade agreement, which came into force in 1993, grants reciprocal most-favored nation (now known as "Normal Trade Relations") treatment. A bilateral investment treaty came into force in January 1994. In addition, an avoidance of double taxation treaty came into force in December 1996. U.S. firms have noted that Kazakhstan implementation of the double taxation treaty has been spotty due to the GOK's lack of technical expertise to implement the terms of the agreement.

IMPORT POLICIES

Customs-Duties and Taxes

The average weighted import tariff in Kazakhstan is approximately 10 percent. This is largely due to the fact that trade with Russia, Kazakhstan's major trade partner, is duty-free pursuant to a customs union agreement. The GOK is contemplating instituting an industrial policy, which could include quotas and tariffs on select imports to protect local producers. In January 1999, in reaction to the August devaluation in Russia and the consequent influx of inexpensive food products, the GOK temporarily banned the import of a wide range of Russian food products.

Merchandise from non-CIS countries is subject to a value-added tax (VAT) of 20 percent at the time of importation. Goods exported from CIS countries to Kazakhstan are generally taxed at the point of production and are therefore not taxed again upon importation; however, Kazakhstan is negotiating agreements with individual CIS countries to switch to a system of VAT collection at the point of destination (that is, on importation). In addition, customs levies a 0.2 percent import processing fee, based on the declared value of the item. In July 1998, the GOK made all pharmaceutical imports exempt from VAT.

Kazakhstan

In April 1997, the Ministry of Finance announced that enterprises that import materials used in industrial processing will be granted a three-month delay in paying VAT taxes. Of these companies, those that regularly import such items may be granted a one-year delay in paying VAT taxes.

According to the February 1997 law on state support for direct investment, imported goods - - equipment, raw and other materials - - can qualify for complete or partial exemption of duty if the goods are used as an investment in designated "priority sectors" of the economy. Priority sectors include infrastructure, agriculture, tourism and all imported goods related to activity connected with the construction of the new Kazakhstani capital at Astana.

Certain goods that are imported temporarily are exempt from payment of customs duties and taxes. These include transport vehicles, professional and office equipment, goods imported for demonstration purposes, shipping containers, and advertising materials. Such goods may remain in Kazakhstan for one year duty-free. With some exceptions, all other goods may be imported temporarily for a period of two years under a partial duty exemption. The amount of duty payable is equivalent to three percent of the duty chargeable for each calendar month. Goods not eligible for full or partial duty exemption are food products, industrial waste, and consumable materials. U.S. firms report that, in some cases, violations of these provisions by importers have led to confiscation of assets.

Kazakhstan formed a customs union with Russia and Belarus in January 1995 with the Kyrgyz Republic formally joining in 1997 and Tajikistan joining in 1998. Under the provisions of the customs union, trade between these five countries is free of customs duties. The Kyrgyz Republic's accession to the WTO has complicated the future of this customs union.

Customs Procedures

Kazakhstan's customs valuation rules largely conform to the GATT valuation agreement, and its tariff nomenclature is patterned after the WTO's harmonized system.

Article 22 of the 1994 foreign investment law exempts from customs duties property imported by a foreign investor for the purpose of contributing it to the charter fund of a "foreign-shared enterprise" (defined as a Kazakhstan legal entity, such as a limited liability company, in which the foreign investor has an ownership interest). However, varying interpretations of article 22 following the July 1997 changes to the foreign investment law have reduced investor confidence in this article.

U.S. companies have identified as an added cost of doing business in Kazakhstan the cost of customs declarations, as well as a customs' requirement that imported goods be placed in a temporary storage warehouse pending customs clearance. Poor implementation of pre-arrival and periodic declarations has been an additional added cost to businesses. U.S. companies have also complained of a new requirement that they obtain a "transaction passport" to clear imported goods through customs. Ostensibly designed to stem the outflow of capital, the state customs department and the national bank of Kazakhstan are now requiring importers to show copies of contracts and other documentation to prove the legitimacy and verify pricing on import/export transactions.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Government observance of old soviet standards, testing, labeling, and certification requirements is uneven. Such requirements constitute a barrier when they differ significantly from U.S. and western standards. In November 1996, the U.S. National Institute of Standards and Technology signed a memorandum of understanding with the Kazakhstan Government to bring Kazakhstan metrology methods in conformity with international rules and practices.

GOVERNMENT PROCUREMENT

During ongoing negotiations to accede to the WTO, Kazakhstan declared its intention to accede to the WTO's agreement on government procurement. It is anticipated that the framework for government procurement now being developed will provide foreign bidders with enhanced access to government tenders, assurances of national and most-favored nation treatment, and international standards of transparency and public accountability.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The bilateral trade agreement between the United States and Kazakhstan incorporates provisions on the protection of intellectual property rights (IPR). In anticipation of this agreement, Kazakhstan acceded to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT) and the Madrid agreement concerning the international registration of marks and joined WIPO. Kazakhstan recently became a member of the Berne Convention for the Protection of Literary and Artistic Work. It has not, however, joined the Geneva Phonograms Convention. Kazakhstan has signed but has not ratified the 1997 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In June 1996, Kazakhstan enacted a new law on copyright protection which includes sanctions for infringement.

Under the bilateral trade agreement, Kazakhstan agreed to bring its IPR regime up to world standards. Kazakhstan has fulfilled most of its obligations under the trade agreement, but still has several steps to take. For example, under the bilateral trade agreement, Kazakhstan is obligated to provide protection for U.S. sound recordings and provide (retroactive) protection for works and sound recordings predating May 1973.

Piracy of U.S. movies, computer software and audio-cassettes in Kazakhstan is reportedly extensive. To date, however, there have been no known enforcement actions taken against anyone for IPR violations.

INVESTMENT BARRIERS

There is a severe lack of capital in domestic enterprises for servicing loans and to meet equity percentages in joint ventures. In addition, in accordance with the constitution, foreign firms currently cannot purchase land. Firms can obtain leasing rights to land only through a domestic partner for a maximum of 99 years. Kazakhstan authorities have also often insisted that U.S. firms invest in social programs for local communities. U.S. businesses report that bureaucracy and corruption have increased in the past year, adding to costs of doing business.

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstan companies. The total registered capital of banks with foreign participation cannot be more than 25 percent of the total registered capital of all banks in Kazakhstan.

OTHER BARRIERS

There are other structural barriers including a weak system of business law, a shortage of domestic capital to pay for U.S. goods, lack of an effective judicial process for breach-of-contract resolution, logistical difficulties of serving the Kazakhstan market, and an unwieldy and corrupt government bureaucracy.